

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1334.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF TOMATO CATSUP.

On October 20, 1910, the United States Attorney for the District of Minnesota, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 798 cases of tomato catsup, found in the possession of Stone, Ordean & Wells Co., Duluth, Minn. The shipping cases containing said product bore labels with the following statements: "Elk's Pride Brand Tomato Catsup. Made from tomatoes, granulated sugar, onions, spices, and vinegar. Made by the Harbauer-Marleau Co., Toledo, O."

Analysis of samples of said product, made before seizure by the Bureau of Chemistry of the United States Department of Agriculture, showed it to contain benzoate of soda. The case was certified to the United States Attorney because of misbranding, in that the benzoate of soda was not declared on the labels, and not because of adulteration. The United States Attorney, nevertheless, after alleging in the libel that the catsup, following transportation from Ohio into Minnesota, remained in the original unbroken packages and was misbranded in violation of the Food and Drugs Act because it contained benzoate of soda, the presence of which was not declared on the label, inadvertently alleged further that the benzoate of soda was a poisonous and deleterious ingredient, whereas the contrary has been determined after full investigation by the Referee Board of Consulting Scientific Experts.

Examination of samples, made by the Bureau of Chemistry subsequent to seizure, showed the presence of yeasts and spores, varying from 30 to 1,400 per one-sixtieth cmm., bacteria varying from

21,000,000 to 480,000,000 per cc., molds in fields examined varying from 65 to 90 per cent. On notice of results of these examinations of samples taken after seizure the United States Attorney filed an amended libel, alleging that the catsup was adulterated because the catsup consisted wholly or in part of a filthy, decomposed, and putrid vegetable substance, unfit for food.

No contest being made by the owners of the catsup, judgment was taken by default, and on June 2, 1911, a decree was entered declaring the product to be misbranded only as alleged in the libel and decreeing condemnation and forfeiture of the catsup to the United States, with the proviso that the catsup be delivered to the Harbauer-Mar-leau Co., of Toledo, Ohio, on the payment of all the costs of the proceedings and the furnishing of a sufficient bond in the sum of \$1,000, on condition that the catsup should not be sold or disposed of contrary to the provisions of the Food and Drugs Act of June 30, 1906, or the laws of any State, Territory, or insular possession. On payment of the costs, amounting to \$88, and the furnishing of the bond, the catsup was restored to the claimants.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *January 26, 1912.*